

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

May 13, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Amendment of General Lease No. S-5468 to Waimanalo Teen Project, Lessee, for
Multi-Purpose Community Facility Purposes, Waimanalo, Oahu, Tax Map Key:
(1) 4-1-9:265

APPLICANT:

Waimanalo Teen Project, a domestic non-profit corporation.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Koolaupoko, Oahu, identified by Tax Map Key:
(1) 4-1-9:265, as shown on the attached map labeled Exhibit A.

AREA:

10.893 acres, more or less.

ZONING:

State Land Use District: Agriculture
City & County of Honolulu LUO: AG-1

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Multi-purpose community facility purposes.

LEASE TERM:

Sixty-five (65) years, commencing on May 1, 1996 and expiring on April 30, 2061.

ANNUAL RENT:

\$480 for the time period June 1, 2005 to April 30, 2011.

RENTAL REOPENINGS:

At the end of 15th, 25th, 35th, 45th and 55th years of the lease term.

DCCA VERIFICATION:

| | | |
|---|--------------|--------------|
| Place of business registration confirmed: | YES <u>X</u> | NO <u> </u> |
| Registered business name confirmed: | YES <u>X</u> | NO <u> </u> |
| Applicant in good standing confirmed: | YES <u>X</u> | NO <u> </u> |

BACKGROUND:

At its meeting of October 12, 1990 (F-9), the Board of Land and Natural Resources approved the issuance of a direct lease to Waimanalo Teen Project (Lessee) for a multi-purpose community facility at Waimanalo. The lease term would be for sixty-five (65) years. On May 13, 1994 (F-7), the Board changed the annual rent from market annual rent to minimum annual rent which is 20% of the market annual rental plus 5% thereof as management fee for a total of twenty-five percent (25) of the annual market rental.

At its meeting of July 8, 2010 (D-13), the Board approved amending General Lease No. S-5468 by revising the annual rent to \$480 for the period from June 1, 2005 to April 30, 2011. Previously, the Board had consented to a sublease arrangement between Waimanalo Teen Project and Castle Medical Center. The rent was revised upward from \$317 to \$1,270 per annum. Castle Medical Center terminated the sublease on July 31, 2001 and Waimanalo Teen Project notified the Department in 2009. Unfortunately, the Board's minimum rent policy was approved on May 13, 2005 (D-19), therefore staff recommended the minimum rent of \$480 to be effective June 1, 2005.

ANALYSIS:

Annually, our Appraisal Section monitors rental reopenings of Land Divisions' tenants. Historically, non-profit organizations obtained their lease from the Land Board through public auction or negotiated, political might, religious preference, and public benefit. This

also has resulted in varying lease provisions. A non-profit lease rent could be set for the full-term at \$1 per year, fair market, 20% of fair market or \$480 per year for the first ten years. Now our staff reviews the lease provisions, performance of the tenant and information compiled in the Application and Qualification Questionnaire. The reopening is taken to the Land Board for its approval. Independent real estate appraisers are not hired to determine the fair market rent. A cost normally paid by Land Division.

In October 1990, the Land Board authorized (negotiated) Waimanalo Teen Project's lease pursuant to Section 171-43.1, Hawaii Revised Statutes. General Lease No. S-5468 provision C, page 2 states:

"The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. "

Provision A, page 1 states:

"The minimum annual rent shall be twenty percent (20%) of the market annual rental and a five percent (5) management fee which is five percent (5%) of the annual market rental for a total of twenty-five percent (25%) of the annual market rent."

Therefore, the lease requires the Lessee to pay a minimum annual rent which is 25% of the market annual rental.

The Land Board is authorized to lease State lands to qualifying eleemosynary (charitable) organizations at nominal rent, as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

A section 501(c)(1) organization must be both organized by an Act of Congress and be an

instrumentality of the United States, while a section 501(c)(3) organization is a privately organized charitable organization.

When considering lease dispositions to, or rental reopenings for, eleemosynary organizations, the Land Board may therefore set the rent by direct negotiation at an amount below fair market rental (i.e., nominal rent).

On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the minimum rent for a lease to a charitable organization be no less than \$480 per year. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent and the minimum rent of \$480 per year. In order to have a standard nominal rent for qualifying non-profit tenants, staff generally recommends rent be set at \$480 per year.

Lessee submitted an Application and Qualification Questionnaire, a copy of which is attached as Exhibit B. The application provides information on Lessee's operations, services, program measurements, budget and funding, and includes evidence of Lessee's 501(c)(3) status.

Rent of \$480 is paid to April 30, 2011. Liability insurance expires on November 18, 2011. We have \$2,540 cash bond on hand.

In conclusion, staff is recommending the Land Board amend General Lease No. S-5468 annual rent to be \$480. This would be consistent with other qualifying non-profit tenants.

RECOMMENDATION: That the Board:

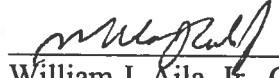
1. Authorize the amendment of General Lease No. S-5468, Waimanalo Teen Project, Lessee, revise annual rent for the period from May 1, 2011 to April 30, 2021, to be FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$480.00), subject to:
 - A. The standard terms and conditions of the most current lease amendment document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Charlene Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:


William J. Aila, Jr., Chairperson

APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

Part I: General Information

1. Applicant's legal name: Waimanalo Teen Project, Inc.
2. Applicant's full mailing address:
41-477 Hihimanu Street
Waimanalo, HI 96795
3. Name of contact person: James Torres, Director
Contact person Phone No.: 259-7214 Fax No.: _____
4. Applicant is interested in the following parcel:
Tax Map Key No.: 4-1-9; Par. 1 Location: Waimanalo
If Applicant is current lessee: General Lease No.: GL 5468
5. When was Applicant incorporated? 1975
6. Attach the following:
 - A. Articles of Incorporation
 - B. Bylaws
 - C. List of the non-profit agency's Board of Directors
 - D. IRS 501(c)(3) or (c)(1) status determination
 - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
 - F. Audited financial statements for the last three years. If not audited, explain why.
If Applicant is a new start-up, attach projected capital and operating budgets.
 - G. Any program material which describes eligibility requirements or other requirements to receive services **Req.- Age 10 and over**



Part II: Qualification

7. Is Applicant registered to do business in Hawaii: Yes ☒ No ☐
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes ☒ No ☐
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? Yes ☒ No ☐

List all such licenses and accreditations required: None required

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes ☐ No ☒

If yes, explain:

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list: Yes ☒ No

| <u>Doc. No.</u> | <u>Type of Agreement</u> | <u>Term of Agreement</u> |
|-----------------|--------------------------|--------------------------|
| | | |
| | | |
| | | |

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap? Yes ☒ No

If yes, explain:

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below: Yes ☒ No

| <u>Agency</u> | <u>Contract Term</u> | <u>Contract Amount</u> |
|---------------|----------------------|------------------------|
| A.U.W. | Calendar 2009 | \$ 24,720.00 |
| A.U.W. | Calendar 2008 | \$ 63,385.00 |
| A.U.W. | Calendar 2007 | \$ 69,297.00 |
| | | \$ |
| | | \$ |
| | | \$ |
| | | \$ |
| | | \$ |

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private fundors and/or staff or Board members who possess significant experience in Applicant's service field.

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?
Various youth related activities to include Auto-Tech classes, Agriculture classes, sports, fun, recreational and social activities. Community activities. Meetings, parties, family/club gatherings.
16. What are the specific objectives of these activities?
De-Isolation activities, social and educational experiences.
17. Describe the community need for and the public benefit derived from these activities.
Social interaction between generations. Neutral ground to discuss and workout difficulties between families, peers, and communities.
18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7) other applicable characteristic(s).
1. Age 10 and up
19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level, ethnic background, income level, disability, etc.
Age 10 and up
20. Do you require membership to participate in these activities? Yes ☒ No
If yes, list the requirements of becoming and remaining a member:

21. How many unduplicated persons will engage in the activities annually?

| <u>Activity</u> | <u>Persons Per Year</u> |
|--------------------------|-------------------------|
| Youth related activities | 400 + |
| Families and Community | 1,000 + |
| | |
| | |

22. Is State funding made available for the activities to be conducted on the leased premises? Yes ☒ No

If yes, by which State agency: _____

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

None

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

N/A- Already developed

25. What improvements to the land do you intend to make and at what cost?

No more planned

26. How will the improvements be funded?

N/A

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed.

All met.

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:

None planned.

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

WAIMANALO TEEN PROJECT
Applicant Name _____ Applicant Name _____
By: EDMOND TIZARD By: _____
Its: VICER-PRESIDENT Its: _____
Date: 4/15/11 5/27/10

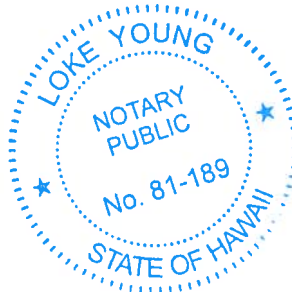
Subscribed and sworn to before me this
15th day of April, 20 11.

Notary Public Loke Young

County of: Honolulu

State of: Hawaii

My commission expires: 5/29/2014

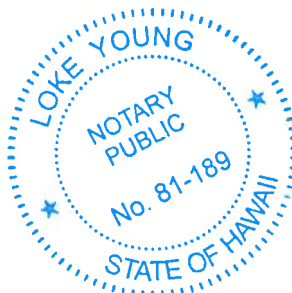


Doc. Description Application & Qualification Questionnaire

Doc. Date: undated No. Pages: 5

Loke Young 1st
Notary Printed Name Jud. Circuit

Rev. 08/30/05





P.02
FEB 9
District Director
Internal Revenue Service

Date:

APR 26 1972

In reply refer to: LA-EO-

Code 421: 1402:

(213)600-4763

Waimanalo Teen Project
41-1327 Kalamianale Hwy.
Waimanalo, Hawaii 96795

File Returns with Internal Revenue Service Center: Philadelphia, Pa
Accounting Period Ending: Dec 31
Address Inquiries to District Director of Internal Revenue: Los Angeles, Ca
Gentlemen:

Based on information supplied, and assuming your operations will be as stated in your application for recognition of exemption, we have determined you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

We have further determined you are not a private foundation within the meaning of section 509(a) of the Code, because you are an organization described in section 509(a)(2).

You are not liable for social security (FICA) taxes unless you file a waiver of exemption certificate as provided in the Federal Insurance Contributions Act. You are not liable for the taxes imposed under the Federal Unemployment Act (FUTA).

Since you are not a private foundation, you are not subject to the excise taxes under Chapter 42 of the Code. However, you are not automatically exempt from other Federal excise taxes.

Donors may deduct contributions to you as provided in section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use are deductible for Federal estate and gift tax purposes under section 2055, 2106, and 2522 of the Code.

If your purposes, character, or method of operation is changed, you must let us know so we can consider the effect of the change on your exempt status. Also, you must inform us of all changes in your name or address.

EXHIBIT "c"

(over)

(J-178 (10-71))

-2-

If your gross receipts each year are normally more than \$5,000, you are required to file Form 990, Return of Organization Exempt From Income Tax, by the 15th day of the fifth month after the end of your annual accounting period. The law imposes a penalty of \$10 a day, up to a maximum of \$5,000, for failure to file a return on time.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-B. In this letter we are not determining whether any of your present or proposed activities are unrelated trade or business as defined in section 513 of the Code.

You need an employer identification number even if you have no employees. If an employer identification number was not entered on your application, a number will be assigned to you and you will be advised of it. Please use that number on all returns you file and in all correspondence with the Internal Revenue Service.

Please keep this determination letter in your permanent records.

Sincerely yours,

J. L. Schmidt

District Director

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. S-5468

THIS LEASE, made this 6th day of MARCH, 1996, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and WAIMANALO TEEN PROJECT, a Hawaii non profit corporation, whose address is 41-1347 Kalaniana'ole Highway, Waimanalo, Hawaii 96795, hereinafter referred to as the "Lessee";

WITNESSETH:

The Lessor, pursuant to Section 171-43.1, Hawaii Revised Statutes, and for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at Waimanalo, Koolaupoko, Oahu, Hawaii, identified as "Multi-Purpose Community Facility," being a portion of the Government (Crown) Land of Waimanalo," containing an area of 10.893 acres, more particularly described in Exhibit "A" and delineated on Exhibit "B," both attached hereto and made parts hereof, said exhibits being respectively, a survey description and survey map prepared by the Survey Division, Department of Accounting and General Services, State of Hawaii, both being designated C.S.F. No. 22,320 and dated May 18, 1995.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of sixty-five (65) years, commencing on the 1st day of MAY, 1996, up to and including the 30th day of APRIL, 2061, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in annual installments on MAY 1 of each and every year during the term as follows:

A. For the first fifteen (15) years, the sum of THREE HUNDRED SEVENTEEN AND NO/100 DOLLARS (\$317.00) per annum.

The minimum annual rent shall be twenty percent (20%) of the market annual rental and a five percent (5%) management

EXHIBIT "D"

fee which is five percent (5%) of the annual market rental for a total of twenty-five percent (25%) of the annual market rent.

B. The annual rental reserved shall be reopened and redetermined as of the day following the expiration of the fifteenth (15th), twenty-fifth (25th), thirty-fifth (35th), forty-fifth (45th), and fifty-fifth (55th) years of the lease term.

C. Determination of rental upon reopening of the annual rental. The rental for any ensuing period shall be the fair market rental at the time of reopening. Except as provided herein, the provisions in Hawaii Revised Statutes, Chapter 658, shall be followed. At least six (6) months prior to the time of reopening, the fair market rental shall be determined by an appraiser whose services shall be contracted for by the Lessor, and the Lessee shall be promptly notified by certified mail, return receipt requested, of the fair market rental as determined by Lessor's appraiser; provided, that should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt thereof that Lessee disagrees with the fair market rental as determined by Lessor's appraiser and that Lessee has appointed its own appraiser to prepare an independent appraisal report, then the fair market rental as determined by Lessor's appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening. If Lessee has notified Lessor and appointed his appraiser as stated hereinabove, Lessee's appraiser shall complete his appraisal and the two appraisers shall then exchange their reports within forty-five (45) days from the date of Lessee's appointment of the appraiser.

The two appraisers shall review each other's reports and make every effort to resolve whatever differences they may have. However, should differences still exist fourteen (14) days after the exchange, the two appraisers shall within seven (7) days thereafter appoint a third appraiser who shall also prepare an independent appraisal report based on the review of the two appraisal reports prepared and any other data. Copies thereof shall be furnished to the first two appraisers within forty-five (45) days of the appointment. Within twenty (20) days after receiving the third appraisal report, all three shall meet and determine the fair market rental in issue. The fair market rental as determined by a majority of the appraisers shall be final and binding upon both Lessor and Lessee, subject to vacation, modification or correction in accordance with the provisions of Sections 658-8 and 658-9, Hawaii Revised Statutes. Each party shall pay for its own appraiser and the cost of the services of the third appraiser shall be borne equally by the Lessor and the Lessee. All appraisal reports shall become part of the public record of the Lessor.